



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,343	01/10/2000	Paul Allan Ryder	9D-EC-19343-Ryder	4209
<div>7590 08/09/2007 JOHN S. BEULICK ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102</div>			<div>EXAMINER JONES, HUGH M</div>	
			<div>ART UNIT 2128</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 08/09/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/480,343

Applicant(s)

RYDER, PAUL ALLAN

Examiner

Hugh Jones

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. Claims 1-25, 27-41 of U. S. Application 09/480,343 filed on 10-February-2000, are presented for examination.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- it lacks a signature;
- does not identify the specification

See 37 CFR 1.63:

37 CFR 1.63. Oath or declaration.

(a) An oath or declaration filed under § 1.51(b)(2) as a part of a nonprovisional application must:

(1) Be executed, *i.e.*, signed, in accordance with either § 1.66 or § 1.68. There is no minimum age for a person to be qualified to sign, but the person must be competent to sign, *i.e.*, understand the document that the person is signing;

(2) Identify each inventor by full name, including the family name, and at least one given name without abbreviation together with any other given name or initial;

(3) Identify the country of citizenship of each inventor, and

(4) State that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

(b) In addition to meeting the requirements of paragraph (a) of this section, the oath or declaration must also:

(1) Identify the application to which it is directed;

(2) State that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25, 27-41 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Fukuda et al..

5. Fukuda et al. disclose :

Managing building options, comprising:

obtaining from a first user an indication of at least one available new building option for constructing a new building;
causing the at least one available new building option to be electronically accessible to a second user;
providing information electronically on the at least one available new building option to the second user;
obtaining electronically from said the second user an indication of at least one choice from among the at least one available new building option; and
providing the indication of the at least one choice to said the first user;
wherein the indication of the at least one available new building option is obtained electronically;
wherein the indication of the at least one choice is provided to the first user electronically;

Fukuda discloses a networked interactive VR system for home and kitchen layout for customers. See abstract: "a Virtual Reality (VR) technology application, a networked VR-supported design system of a kitchen layout. This networked VR system was developed on personal computers to allow customers to design at home. With the VR system, customers can have a pseudo-experience of their "virtual kitchen", *modify the design of the kitchen*, and make decisions by being provided with a good idea of their potential purchase. The VR system will also play an important role in user interface in the House Design Advisory System. This system gives advice on house design, as well as on kitchen layout design, according to the customers' diversified lifestyles." See col. 2, page 93: "The VR allows customers to examine a design and make changes at an early stage in the process. Examples of VR applications

are to be found in design, prototype, and space layout planning." See section 2 (layout design in the showroom); section 4 (VR system on the internet); section 5 (VR systems for customers))

4 PUTTING VR SYSTEMS ON THE INTERNET

We extend the VR system to be accessed on the Internet and to correspond to the changing needs and values of consumer.

- The interface on the World Wide Web appears.
- A customer looks at the interface and selects each product interactively (1).
- If he/she wants to know the more information of a component product such as a function, a price, a size, and a photograph, he/she can see by clicking the product name. The detailed information including behavior are shown using multimedia (2).
- Each component product is selected over and over. When all products are selected, he/she may click the button named "finished!".
- The selected products are represented (3). If he/she wishes to experience the virtual world, he may click the button named "VR". Then he/she can experience the virtual world and review the first design with the existing photograph together (4).

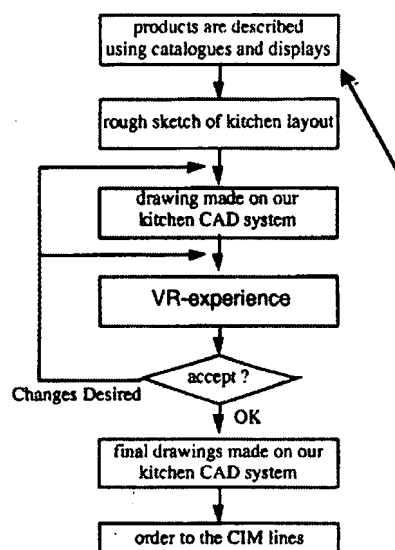


Figure 1: System Kitchen Planning Process

Figure 6: design process at home. 1) A customer looks at the interface on the World Wide Web and selects each product interactively; 2) If he/she wants to know the more information of a component product, he/she can see by clicking the product name; 3) When all products are selected, they are represented; 4) He/She can experience the virtual world and review the first design with existing photograph together; 5) If he/she wants to replace a component product, a design alternative palette is appeared by clicking the product in the virtual world; 6) When he/she selects a favorite product in the palette, it is loaded from a database on the network; 7) After designing, if he/she wishes, the VRML data is sent to the showroom; Gray Area) A system is under development employing a GA or AI.

wherein the first user inputs said the indication of the at least one available new building option at a first computing unit and said the second user inputs the indication of the at least one choice from among the at least one available new building option at a second computing unit coupled to the first computing unit via a communications network;

wherein the communications network is a global computer network;

wherein the at least one available option is electronically accessible to said the second user only if said the second user first electronically transmits a valid password.

4 PUTTING VR SYSTEMS ON THE INTERNET

We extend the VR system to be accessed on the Internet and to correspond to the changing needs and values of consumer.

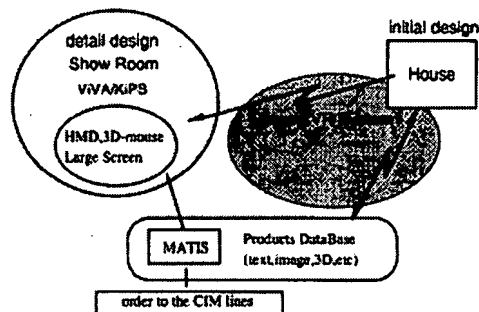


Figure 4. Network VR System

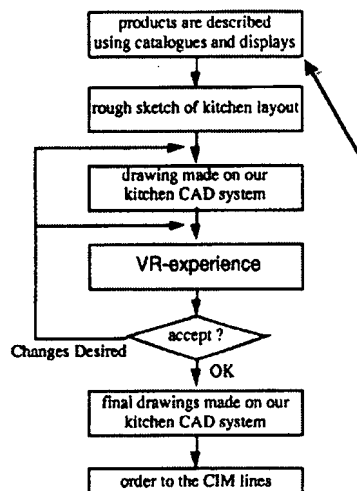


Figure 1: System Kitchen Planning Process

wherein the at least one available new building option comprises at least one building component;
 further comprising electronically providing information on the at least one building component to
 said the second user;
 wherein the at least one building component comprises a household appliance, and wherein the
 information comprises information relating to said the household appliance;
 (Note fig. 1 and col. 2, page 95):

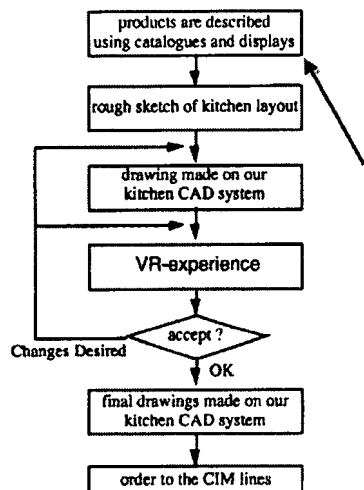


Figure 1: System Kitchen Planning Process

Process 1: A customer decides the basic plan. The following items will be checked:

- budget
- floor plan of the room
- kitchen layout ("I"-shape, "II"-, "L"-, "U"-, "peninsula"-, "island"-)
- included appliances (a refrigerator, a cupboard, a microwave oven, a toaster oven, and a dining table, etc.)

Process 2: He/She selects each component product and makes the first plan. The following items will be selected:

- cabinets, a counter, a sink, faucets, a dish dryer, a range, and a hood

wherein the information comprises pricing information;
 wherein the information comprises an image of the household appliance;
 wherein said the information comprises performance information of said the household appliance;
 further comprising electronically providing information on the at least one available new building
 option to said the second user;
 wherein said the information comprises product category information;
 (page 95, col. 2):

Process 1: A customer decides the basic plan. The following items will be checked:

- budget
- the plan of the room
- kitchen layout ("I"-shape, "II"-, "L"-, "U"-, "peninsula"-, "island"-)
- included appliances (a refrigerator, a cupboard, a microwave oven, a toaster oven, and a dining table, etc.)

Process 2: He/She selects each component product and makes the first plan. The following items will be selected:

- cabinets, a counter, a sink, faucets, a dish dryer, a range, and a hood

page 96:

- Using the Anchor node, the information such as a size and a price of component products can be added. We can make hyper links between a 3-D object and a text, an image, a movie, a sound, and other 3-D objects.
- Using the Inline node, the necessary 3-D objects can be read from other database on the Internet.
- Using the Sensor or Interpolator node, the function of each component product can be explained effectively. For example, cabinet doors can be opened and closed.

page 98 :

- The interface on the World Wide Web appears.
- A customer looks at the interface and selects each product interactively (1).
- If he/she wants to know the more information of a component product such as a function, a price, a size, and a photograph, he/she can see by clicking the product name. The detailed information including behavior are shown using multimedia (2).

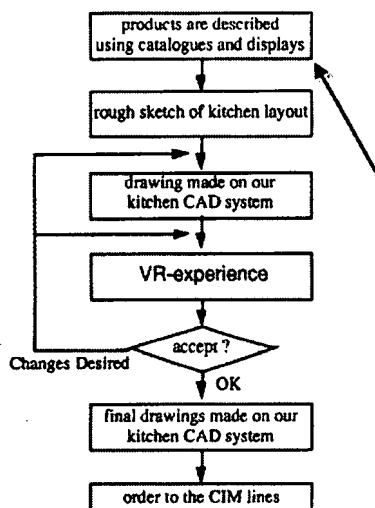


Figure 1: System Kitchen Planning Process

Response to Arguments

6. Applicant's arguments, filed 7/11/2005, have been carefully considered and are not persuasive. Applicants are thanked for the amendment and arguments.
7. The objection to the specification is withdrawn.

Art Unit: 2128

8. The 112 rejections are withdrawn in view of the amendment.
9. Applicant's arguments regarding the art are not persuasive.
10. Applicants recite the claims on pages 9-12; Applicant's argument appears to be (pages 8-9):

Fukuda describes a networked Virtual Reality (VR) system that allows customers to preview their kitchen layout designs in a VR setting. Data is input into the VR system allowing the customer to have a clear concept of the potential purchase and also take part in the design process including modifying the design. Customers can access the VR system on the Internet and modify the design from home. Notably, Fukuda describes kitchen design, rather than new building design. Specifically, Fukuda states the authors have made "progress to widen the technology from kitchens to the whole house." This refers to the ability to allow the customer to roam the entire house in VR, not design an entire house.

Furthermore, the authors express their "goal is to expand the scope of our system so that an entire home may be designed." The article does not describe, suggest, particularly point out, or distinctly claim a VR home design system. Notably, Fukuda does not describe or suggest a method of managing building options for constructing a new building.

11. Applicants state that the claimed invention is not directed to modification of existing structures, and instead that the claims are directed to options for a "new" building.
12. Fukuda discloses a networked interactive VR system for home and kitchen layout for customers. See abstract: "a Virtual Reality (VR) technology application, a networked VR-supported design system of a kitchen layout. This networked VR system was developed on personal computers to allow customers to design at home. With the VR system, customers can have a pseudo-experience of their "virtual kitchen", *modify the design of the kitchen*, and make decisions

Art Unit: 2128

by being provided with a good idea of their potential purchase. The VR system will also play an important role in user interface in the House Design Advisory System. This system gives advice on house design, as well as on kitchen layout design, according to the customers' diversified lifestyles." See col. 2, page 93: "The VR allows customers to examine a design and make changes at an early stage in the process. Examples of VR applications are to be found in design, prototype, and space layout planning." See section 2 (layout design in the showroom); section 4 (VR system on the internet); section 5 (VR systems for customers))

13. Claim 1 recites:

1. (currently amended) A method of managing building options, comprising:

obtaining from a first user an indication of at least one available new building option for ~~at least one of constructing a new building and modifying an existing building;~~

causing the at least one available new building option to be electronically accessible to a second user;

providing information electronically on the at least one available new building option to the second user;

obtaining electronically from said the second user an indication of at least one choice from among the at least one available new building option; and

However, the phrase "*for constructing a new building*" refers to intended use. It is also noted that dependent claims are drawn to, for example, "appliances".

14. In response to applicant's argument regarding new vs. existing buildings, a recitation of the intended use of the claimed invention must result in a structural

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

15. The specification indicates that *for constructing a "new" building* refers to intended use. The specification is drawn to managing building options, and does not distinguish between new and modified buildings, with respect to the claimed invention.

See Page 1:

Typically, when a homebuyer is going through the home buying or remodeling process, choices need to be made with regard to what type of building components are to be installed in the home. For example, a builder

Page 3:

In accordance with one aspect of the present invention, a customized, electronically accessible selection site for a prospective homebuyer to select options for new home construction or existing home modification, is provided.

Page 4

known in the art. In the context of this invention, the term "builder" comprises a person or organization which has indicated an interest in performing or managing the construction or modification of a new or existing home, building, condominium, townhouse, commercial structure, dwelling or any other structure as may be known in the art.

In order for a homebuyer to make an informed decision regarding the building components to be installed in their home, they must wade through multiple Web sites to gather the information necessary. Therefore, a need exists for a way to provide information on the building components offered by a builder to a homebuyer, while at the same time allowing a homebuyer to indicate their selection of building components to the builder.

16. Note MPEP 2114:

APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART

Art Unit: 2128

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. >*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); <*In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

17. Applicants appear to argue (page 9) a "teaching away".

Furthermore, the authors express their "goal is to expand the scope of our system so that an entire home may be designed." The article does not describe, suggest, particularly point out, or distinctly claim a VR home design system. Notably, Fukuda does not describe or suggest a method of managing building options for constructing a new building.

However, this is an express teaching of kitchen design as well as new home design itself.

18. Applicants' argument that options for a "new building design" and an "existing building design" are patentable distinctions in the context of the claimed invention is not credible or persuasive. *In re Graves*, 69 F.3d 1147, 36 USPQ2d 1667 (Fed. Cir. 1995), held that the PTO properly rejected applicant's claims to an electrical system testing device and method as anticipated by a reference (Rockwell) that disclosed a wire harness tester even if (1) the claims are construed to require simultaneous output points

Art Unit: 2128

monitoring and (2) the reference does not explicitly disclose such simultaneous monitoring. The reference "anticipates [the] claim, even if it does not specifically disclose simultaneous monitoring of the output points, if simultaneous or parallel monitoring is within the knowledge of a skilled artisan. See, e.g., *In re LeGrice*, 302 F.2d 929, 133 USPQ 365 (CCPA 1962). A reference anticipates a claim if it discloses the claimed invention "such that a skilled artisan could take its teachings *in combination with his own knowledge of the particular art and be in possession of the invention*." "Even the applicant . . . stated [to the Board] that one with knowledge of 'basic electronics and simple logic' would understand the difference between the operation of the series circuit of [the reference] and the parallel circuit of the claimed invention. Thus, . . . a skilled artisan could take [the reference's] teachings in combination with his own knowledge and be in possession of the device of applicant's claim."

19. In any case, it is noted that claim 41, for example is directed to modifying an existing building.

41. (currently amended) A system for managing building options comprising:

means for obtaining from a first user an indication of at least one available new building option for at least one of constructing a building and modifying an existing building;

means for causing the at least one available new building option to be electronically accessible to a second user;

means for providing information electronically on the at least one new building option to said second user;

means for obtaining electronically from said second user an indication of at least one choice from among the at least one available new building option; and

means for providing the indication of the at least one choice to said first user.

Art Unit: 2128

20. With respect to claim 41, Applicants argue:

Fukuda does not describe nor suggest a system for managing building options comprising means for obtaining from a first user an indication of at least one available new building option for at least one of constructing a building and modifying an existing building, means for causing the at least one available new building option to be electronically accessible to a second user, means for providing information electronically on the at least one new building option to said second user, means for obtaining electronically from said second user an indication of at least one choice from among the at least one available new building option, and means for providing the indication of the at least one choice to said first user. Rather, in contrast to the present invention, Fukuda describes a VR system for designing kitchens. For the reasons set forth above, Claim 41 is submitted to be patentable over Fukuda.

The patentable distinction has not been explained.

21. With respect to claim 27, Applicants argue:

Fukuda does not describe nor suggest at least one program storage device readable by a machine, tangibly embodying at least one program of instructions executable by the machine to perform a method of managing building options, said method comprising obtaining from a first user an indication of at least one available new building option for constructing a new building,

Compare to claim 27:

27. (currently amended) At least one program storage device readable by a machine, tangibly embodying at least one program of instructions executable by the machine to perform a method of managing building options, said method comprising:

obtaining from a first user an indication of at least one available new building option for at least one of constructing a building and modifying an existing building;

causing the at least one available option to be electronically accessible to a second user;

providing information electronically on the at least one available new building option to the second user;

Art Unit: 2128

22. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., constructing a *new* building") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

23. Applicant's arguments against the 102 rejections are not persuasive.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

25. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2128

26. Any inquiry concerning this communication or earlier communications from the examiner should be:

directed to: Dr. Hugh Jones telephone number (571) 272-3781,

Monday-Thursday 0830 to 0700 ET,

or

the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051 (for formal communications intended for entry)

or (703) 308-1396 (for informal or draft communications, please label *PROPOSED* or *DRAFT*).

Dr. Hugh Jones

Primary Patent Examiner

July 28, 2007


HUGH JONES P.L.D.
PRIMARY PATENT EXAMINER
TECHNOLOGY CENTER 2100